SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 102

LOCAL UNION NO. 721, UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, AFL-CIO, PETITIONER,

vs.

NEEDHAM PACKING COMPANY, d/b/a SIOUX CITY DRESSED BEEF.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

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IN THE DISTRICT COURT OF WOODBURY COUNTY

Equity No. 83728

LOCAL UNION NO. 721, UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS, AFL-CIO, Plaintiff,

vs.

NEEDHAM PACKING COMPANY, INC., d/b/a SIOUX CITY DRESSED BEEF, a corporation, Defendant.

Hon. George M. Paradise, Judge.

PETITION IN EQUITY—Filed August 26, 1961

The plaintiff, Local Union No. 721, United Packinghouse Food and Allied Workers, AFL-CIO, complains of the defendant, Needham Packing Company, Inc., d/b/a Sioux City Dressed Beef, and alleges as follows:

1. Plaintiff, Local Union No. 721, United Packinghouse Food and Allied Workers, AFL-CIO (hereinafter referred to as the Union) is an unincorporated association with its principal office in Sioux City, Iowa. Plaintiff Union is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act (29 U. S. C. 152(5)) and Sections 301(a) and 501(3) of the Labor Management Relations Act of 1947 (29 U. S. C. 185(a), 142(3)). The Plaintiff admits to membership and is the collective bargaining representative of certain employees of the defendant, Needham Packing Company, Inc., d/b/a Sioux City Dressed Beef, in the Meat Packing Plant of the said defendant located in Sioux City, Iowa. Plaintiff represents employees in an industry affecting commerce within the meaning of Sections 301(a) and 501(1) of the Labor Man-

[fol. 4] agement Relations Act of 1947, 29 U. S. C. 185, 142(1).

2. Defendant, Needham Packing Company, Inc., d/b/a Sioux City Dressed Beef, is a corporation organized and existing under and by virtue of the laws of the State of Delaware and does business and maintains its principal place of business in Sioux City, Iowa, where it operates a Meat Packing plant. Defendant is engaged in an industry affecting commerce within the meaning of Sections 301(a) and 501(1) of the Labor Management Relations Act of 1947, 29 U. S. C. 185(a), 142(1).

3. On or about the first day of October, 1960, the plaintiff, representing employees of defendant's Sioux City packing plant, and the defendant entered into a collective bargaining agreement to remain in effect by its terms until October 1, 1961. Said agreement is now, and at all times herein mentioned was, in full force and effect. Said collective bargaining agreement is incorporated herein as though fully set forth and a copy thereof is attached hereto as Exhibit "A". Said agreement covers the terms and conditions of employment of employees engaged in an industry affecting commerce within the meaning of Sections 301(a) and 501(1) of the Labor Management Relations Act of 1947, 29 U. S. C. 185(a), 142(1).

4. Section 33 of the collective bargaining agreement provides a procedure for the adjustment and settlement of grievances, with arbitration as the final step. Subsec- [fol. 5] tion (C) (1) through subsection (c)(4) of Section 33 of the agreement (at page 13 of Exhibit "A" attached to this Complaint) provide for certain steps in the procedure for taking up grievances in meetings between the parties. Subsection 33(c)(5) then provides as follows:

> In the event a dispute shall arise between the Company and the Union with reference to the proper interpretation of (sic) application of the provisions of this contract and such dispute cannot be settled by mutual agreement of the parties, such dispute shall be referred to a board of arbitration upon the request of the Union. Said board of arbitration shall consist of three (3) members, one of whom shall be appointed by the Company and one by the Union and the third

member shall be appointed by the two members so selected. In the event the two members first chosen cannot agree upon a third member within three (3) days after the second member has been chosen, either party may request the United States Mediation and Conciliation Service to submit a list of five (5) names. Each party shall alternately strike a name until one name remains which shall be the name of the third arbitrator of the dispute. Said arbitration board shall [fol. 6] have authority only to interpret and apply the provisions of this contract. Its award shall be in writing and shall be binding upon the Company and Union and upon the employees involved.

The party requesting arbitration shall give written notice of that fact to the other party and shall in such notice furnish the name of its arbitrator, and the opposing party shall within twenty-four (24) hours thereafter appoint its arbitrator and give notice in writing to the other party. The parties shall divide the expense of the third arbitrator.

5. On or about May 17, 1961, the defendant discharged approximately one hundred ninety-one (191) persons employed in positions within the collective bargaining unit covered by the collective bargaining agreement. Grievances protesting these discharges were duly presented to the defendant pursuant to and in accordance with the procedure prescribed in Section 33 of the collective bargaining agreement. The grievance designated No. 1-A requests reinstatement of employee Anton Stamoulis to his position with full seniority rights and pay for time lost as a result of his improper discharge, and the grievance designated No. 2-A requests such reinstatement and other re-[fol. 7] lief for the remaining approximately one hundred ninety (190) employees. Copies of said grievances as reduced to writing and duly presented to defendant are attached hereto as Exhibits "B" and "C", respectively, and incorporated herein by reference.

6. In each of the grievances, it is the contention of plaintiff Union that the discharge by the defendant of the em-

ployees involved on or about May 17, 1961, was improper and in violation of the collective bargaining agreement. Section 8(a) of the collective bargaining agreement (page 2 of Exhibit "A" attached hereto) provides in relevant part as follows:

> The management of the plant and the direction of the working forces, including the right to hire, suspend, or discharge *for just cause* . . . are vested exclusively in the Company provided this will not be used for the purpose of discrimination against any employee or to avoid any of the provisions of this agreement. (Emphasis supplied.)

Section 5(a) (page 1 of Exhibit "A" attached hereto) provides as follows:

> The Company agrees that it will give fair and reasonable consideration to any applicant or employee re-
> [fol. 8] gardless of race, sex, color, creed, nationality, membership or non-membership in the Union.

Section 6 (page 1 of Exhibit "A" attached hereto) provides as follows:

> The Union, its officers and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein, *nor shall the Company intimidate or coerce employees into refusing to join the Union or into discontinuing Union membership.* (Emphasis supplied.)

7. Plaintiff Union had duly complied with the procedures set forth in Section 33(c)(1) through 33(c)(4) of the collective bargaining agreement, and has attempted and has at all appropriate times been ready, and has so informed defendant, to process Grievances No. 1-A and 2-A in accordance with the contractual provisions referred to and has repeatedly requested defendant to comply with its obligations to process said grievances in accordance with the contract. Copies of letters dated July 5, 1961 and July 12, 1961 sent by plaintiff to defendant are attached hereto as

Exhibits "D" and "E" respectively and made a part hereof by reference. Defendant made no response to plaintiff's letter of July 12, 1961, and responded to plaintiff's letter of July 5, 1961, with a notice that it was refusing to deal [fol. 9] with plaintiff for any purpose as appears more fully in paragraph 9 of this Complaint.

8. By letter to defendant dated August 10, 1961, plaintiff requested arbitration of Grievances No. 1-A and 2-A in accordance with Section 33(c)(5) of the collective bargaining agreement. In this letter plaintiff furnished the name of its arbitrator of the disputes, offered to pay one-half the expense of the third arbitrator and reminded defendant of its obligation to appoint its arbitrator and give written notice of that fact to the Union within twenty-four (24) hours, all in accordance with Section 33(c)(5) of the collective bargaining agreement. A copy of plaintiff's letter to defendant of August 10, 1961 is attached hereto as Exhibit "F" and made a part hereof by reference. Defendant has failed to designate its arbitrator as required by Section 33(c)(5) of the collective bargaining agreement and has made no response to plaintiff's letter of August 10, 1961.

9. Defendant has at all times continued and does now continue to refuse to process Grievances No. 1-A and 2-A and to proceed to arbitration therewith as required by Section 33(c)(5) of the collective bargaining agreement, notwithstanding the fact that plaintiff has complied fully with the provisions of Section 33, including subdivision (c)(5) insofar as is possible in view of defendant's refusal to proceed to arbitration. By letter dated July 11, 1961, [fol. 10] defendant, by its President and General Manager, wrote plaintiff that it was refusing to meet with plaintiff for the purpose of processing Grievance No. 1-A and 2-A. Defendant still refuses to meet with plaintiff for this purpose. A copy of defendant's letter dated July 11, 1961, is attached hereto as Exhibit "G" and made a part hereof by reference.

10. By its action and conduct aforesaid the defendant herein has breached and continuing to breach the collective bargaining agreement with plaintiff herein and more spe-

cifically the provisions of Section 33(c)(5) thereof, providing for arbitration as the final step in settlement of disputes, and is therefore depriving plaintiff Union of its contractual rights to have the matter in dispute settled in a peaceful and orderly manner as provided by said agreement.

11. This Court has jurisdiction, power, and authority to find and declare that defendant, by failing and refusing to act in compliance with Section 33(c)(5) to refer Grievances No. 1-A and 2-A and the issues in dispute therein to arbitration, is breaching its contract with plaintiff Union; and this Court has jurisdiction, power and authority to restrain and enjoin defendant from refusing to proceed to arbitration as hereinabove set forth; and this Court has jurisdiction, power and authority to issue an order directing that defendant act in accordance with the provisions of Section 33(c)(5) of the collective bargaining agreement [fol. 11] to refer the matter in dispute in Grievances No. 1-A and 2-A to arbitration.

Wherefore, plaintiff prays that this Court enter an Order adjudging and decreeing that the defendant has violated and is violating the above described collective bargaining agreement; enjoining defendant from failing and refusing to arbitrate Grievances No. 1-A and 2-A; ordering defendant to refer said grievances and the matters in dispute therein to arbitration in accordance with and pursuant to the terms of the collective bargaining agreement aforesaid, for costs and for such other and further relief as the Court may deem just.

EXHIBIT "A" TO PETITION

AGREEMENT

PREAMBLE

1. This Agreement is made between SIOUX CITY DRESSED BEEF COMPANY, A DIVISION OF NEEDHAM PACKING COMPANY, INC. (hereinafter called the Company) and the UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, (AFL-CIO), on behalf of itself and its Local Union Number 721, (hereinafter, unless otherwise indicated, the word "Union" refers to United Packinghouse, Food and Allied Workers, AFL-CIO, and its Local No. 721).

[fol. 12]

RECOGNITION

2. The Company recognizes the United Packinghouse, Food and Allied Workers, AFL-CIO and its Local No. 721 as the sole and exclusive collective bargaining agency for all the production employees, excluding plant maintenance employees, over-the-road truck drivers, office clerical employees, professional employees, guards, and all other employees and supervisors as defined in the Labor-Management Act of 1947, as amended.

PURPOSE OF AGREEMENT

3. It is the intent and purpose of the parties hereto that this agreement shall promote and improve the industrial and economic relationships between the Company and the Union as set forth herein and to set forth herein rates of pay, hours of work, and other conditions of employment to be observed between the parties hereto.

AUTHORIZED DUES DEDUCTIONS

. . . . . .

EMPLOYMENT POLICY

5. (a) The Company agrees that it will give fair and reasonable consideration to any applicant or em-

[fol. 13] ployee regardless of race, sex, color, creed, nationality, membership or non-membership in the Union.

(b) Employees who have given long and faithful service in the employ of the Company and have become unable to handle their job, will be given preference for such other work as is available. Wages paid to such employee shall be the wages of the position assigned.

NO COERCION

6. The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein, nor shall the Company intimidate or coerce employees into refusing to join the Union or into discontinuing Union membership.

CONTRIBUTIONS

* * * * * * *

MANAGEMENT

8. (a) The management of the plant and the direction of the working forces, including the right to hire, suspend, or discharge for just cause, to assign to jobs, to transfer employees temporarily within the plant, to increase and [fol. 14] decrease the working force, to determine products to be handled, produced or manufactured, the schedules of production, and the methods, processes, and means of production of handling, are vested exclusively in the Company provided this will not be used for the purpose of discrimination against any employee or to avoid any of the provisions of this agreement.

(b) The Company shall give consideration in hiring to persons formerly employed by the Company whose services were satisfactory.

NO STRIKE OR LOCKOUT

9. It is agreed that during the period of this agreement the employees shall not engage in and the Union shall not

call or sanction any slow down, work stoppage or strike, and no lock out shall be inaugerated by the Company.

HOURS OF WORK

• • • • • • •

HOLIDAYS

• • • • • • •

[fol. 15]

FURNISHING AND MAINTAINING CLOTHES, TOOLS, SAFETY EQUIPMENT, TOOL PREPARATION TIME

• • • • • • •

RELIEF PERIODS

• • • • • • •

GUARANTEED TIME

• • • • • • •

SENIORITY

19. (a) Seniority will operate on a combination department and plant basis.

(b) Employees shall be regarded as probationary for the first thirty (30) days following the date of employment. There shall be no Company responsibility for the re-employment or continuing of employment of probationary employees. After an employee has completed his probationary period, his seniority date shall be the first day of his employment. His seniority department will be where he is regularly assigned on the date which he completes such thirty (30) days of service.

(c) An employee shall have no plant seniority until he has two (2) years of seniority. However, an employee with [fol. 16] no plant seniority shall be accumulating plant service after he has completed his thirty (30) days probationary period. Plant seniority shall date from the original date of hire subsequent to which service has not been broken by any circumstances listed below:

(1) Voluntarily leaves the service of the Company or is discharged for cause.

(2) Failure to return to work when recalled or cannot be located upon reasonable effort on the part of the Company.

(3) Has been in lay off status by the Company for a period of eighteen (18) months.

For the purpose of these seniority provisions only, time that an employee is on lay off status shall be credited to both his plant and departmental seniority.

(d) Both plant and department seniority lists shall be posted in all departments. An over-all plant seniority list will be posted at the time clock near the entrance. If no objections are made to the revised seniority list within thirty (30) days of such posting, then all objections shall be considered waived and such seniority lists shall be final [fol. 17] and binding. Lists must be kept up to date every ninety days. A copy of seniority lists shall be furnished to the local union. Such seniority lists shall be submitted by the Company and agreed to in writing by the parties prior to the signing of this contract, and such lists as agreed upon shall be final and binding.

(e) Gang reduction will be governed by department seniority. Plant seniority shall be followed in determining which employee shall be laid off from the plant.

(1) An employee having plant seniority who is laid off from his own department because of a gang reduction shall have the right to displace the junior employee in the plant, provided the man can perform the job or qualify within a reasonable time. Not to exceed thirty (30) days shall be considered a reasonable time unless the Company and the Union mutually agree to extend such time. In the event the Union or the employee involved feels that the Company has acted unfairly or arbitrarily, then this may be treated as a grievance and processed under the grievance procedure. Or in the alternative, the employee may go off the payroll without losing his department seniority in his own department. If the employee displaces the

junior employee in the plant, he shall establish temporary department seniority in the department in which he goes and suffer no loss of seniority in his own department. [fol. 18] When his original department is increased again, he shall be recalled according to his original department seniority. If he fails to return to his original department, he shall forfeit his original department seniority and seniority in the new department shall become permanent from his date of entry into the new department.

(2) If the employee elects to go off the payroll rather than to misplace the junior employee in the plant, he shall have rehiring rights according to his department seniority. In addition, he shall have rehiring rights under the plant seniority provision, provided he gives the Company three (3) days' written notice to return to any job open in the plant that becomes available. He shall be called to his original department when it is increased in line with his department seniority.

(f) If at the time of layoff in any department there are vacancies in other departments which cannot be filled under any other seniority provisions of this Agreement, the employees being laid off shall have the right at the time of layoff to select the department and shift to which they shall have the right to be assigned in filling of such vacancies in accordance with plant seniority, provided the man can perform the job or qualify within a reasonable time. Not to exceed thirty (30) days shall be considered a rea- [fol. 19] sonable time unless the Company and the Union mutually agree to extend such time. In the event the Union or the employee involved feels that the Company has acted unfairly or arbitrarily, then this may be treated as a grievance and processed under the grievance procedure.

(g) Order of Recall—Seniority departments will be increased as follows:

FIRST — By calling back according to department seniority those employees having plant seniority, provided the employee can perform the job or qualify within a reasonable time. Not to exceed thirty (30) days shall be con-

sidered a reasonable time unless the Company and the Union mutually agree to extend such time. In the event the Union or the employee involved feels that the Company has acted unfairly or arbitrarily, then this may be treated as a grievance and processed under the grievance procedure.

SECOND — By calling back according to plant seniority those employes who have plant seniority, provided they can perform the job or qualify within a reasonable time. Not to exceed thirty (30) days shall be considered a reasonable time, unless the Company and the Union mutually agree to extend such time. In the event the Union or the employee involved feels that the Company has acted unfairly or arbitrarily, then this may be treated as a grievance and processed under the grievance procedure.

[fol. 20]

THIRD — By calling back according to department seniority those employes who are off the payroll and who do not have plant seniority, provided that the employee can perform the job or qualify within a reasonable time. Not to exceed thirty (30) days shall be considered a reasonable time unless the Company and the Union mutually agree to extend such time. In the event the Union or the employee involved feels that the Company has acted unfairly or arbitrarily, then this may be treated as a grievance and processed under the grievance procedure.

Plant seniority shall not be construed so as to allow an employee with plant seniority to bump into another department except when such employee is actually working and there is a layoff within such employee's own department.

(h) Promotions and filling vacancies—

(1) Promotions within the unit shall be made according to department seniority, provided the employee can perform the job or qualify within a reasonable time. Not to exceed thirty (30) days shall be considered a reasonable time unless the Company and the Union mutually agree to extend such time. In the event the Union or the employee involved feels that the Company has acted unfairly or

[fol. 21] arbitrarily, then this may be treated as a grievance and processed under the grievance procedure.

(2) A job shall be deemed vacant and open by reason of rearrangements within a gang necessitated by gang increase; and when it is open because of permanent separation from the payroll of the regular holder of such job, or after the regular holder of such job has been absent for more than seven (7) consecutive calendar days.

(3) Except where a job is vacant as defined in (h) (2) above, the Company may disregard seniority in filling a job, provided the Company knows that the regular holder of a job will not be absent for more than seven (7) consecutive days. Upon the return to work of the regular holder of the job, the employee who filled the job while such regular holder was absent shall be returned to his former job, provided, however, that there shall be no vacancy under the foregoing sections when the regular holder of the job is on vacation.

(4) As to any employee, a promotion is involved only when the rate of the job classification in which the vacancy occurs is higher, the same, or lower than the authorized rate of the job to which the employee is regularly assigned, provided the employee can perform the job or qualify [fol. 22] within a reasonable time. Not to exceed thirty (30) days shall be considered a reasonable time unless the Company and the Union mutually agree to extend such time. In the event the Union or the employee involved feels that the Company has acted unfairly or arbitrarily, then this may be treated as a grievance and processed under the grievance procedure. An employee who is absent and whose seniority entitles him to the job shall be offered the job when he returns to work unless the vacancy has already been filed by an employee with the greater seniority.

(5) The Company shall also post such vacancy in the department wherein it exists and an employee with greater seniority in the department shall have forty-eight (48) hours to bid for the job and shall be assigned in line of seniority as soon as practicable, provided the employee

can perform the job or qualify within a reasonable time. Not to exceed thirty (30) days shall be considered a reasonable time unless the Company and the Union mutually agree to extend such time. In the event the Union or the employee involved feels that the Company has acted unfairly or arbitrarily, then this may be treated as a grievance and processed under the grievance procedure. An employee who is absent and who has greater seniority than the employee placed in the last vacancy shall have the right, upon [fol. 23] his return, to be placed on such job if he makes request within forty-eight (48) hours after he returns to work, provided the employee can perform the job or qualify within a reasonable time. Not to exceed thirty (30) days shall be considered a reasonable time unless the Company and the Union mutually agree to extend such time. In the event the Union or the employee involved feels that the Company has acted unfairly or arbitrarily, then this may be treated as a grievance and processed under the grievance procedure. When the employee with greater seniority has been assigned to a job as a result of the bidding procedure above, all previous bids for that job will thereafter be called null and void.

(6) When jobs are eliminated or changed so as to require the assignment of employees, employees will be demoted from jobs and moved up to jobs in accordance with the rules now applicable for gang arrangements necessitated by increase or decrease in the department.

(7) Employees leaving the bargaining unit to accept a job with the Company outside of the unit shall retain their plant seniority rights in the unit for a period of one (1) year and their department seniority rights in the unit for a period of six (6) months provided they remain in the department, and department seniority rights for ninety (90) days if they leave both the unit and the department. [fol. 24] Any employee who moves out of the bargaining unit more than once in a twelve (12) month period except in an emergency or for temporary relief in case of illness or a vacation, shall lose all seniority rights under this Agreement.

(j) Employees will be transferred from one department to another according to the following terms: At the Company's or the employee's request for a period not to exceed ninety (90) days without losing his seniority status within his own department, provided, however, that no employee shall be transferred to the same department more than once within a twelve (12) month period. If the employee decides to return to his original department within the ninety (90) day period he shall be permitted to do so without loss of department seniority. If he remains in the department to which he is transferred, beyond the ninety (90) days, he shall forfeit seniority in his original department. He shall establish seniority in the new department from his first day there, provided he does not return to his original department within the ninety (90) day period. When an employee is on such transfer from his original department and his original department is reduced within the ninety (90) day period, he must elect at the time of such reduction either to stay in the department or to return to his old department and be assigned according to his plant seniority, unless such employee [fol. 25] elects to forfeit his seniority in his old department and remain permanently in the new department.

A record will be kept in the employment office of employees desiring transfers to other departments; such opening will be filled from the list of employees desiring a transfer to such department in accordance with: (The Company shall have no financial liability to any employee or to the Union in the event an error or mistake is made by the Company in the application of this paragraph, provided this shall not apply to financial liability to the Company for its failure to follow the contract subsequent to the time a formal claim is made against the Company.)

First: Their plant seniority, and

Second: Their accumulated plant service, provided the employee can perform the job or qualify within a reasonable time. Not to exceed thirty (30) days shall be considered a reasonable time unless the Company and the Union mutually agree to extend such time. In the event the Union or the employee involved feels that the Com-

pany has acted unfairly or arbitrarily, then this may be treated as a grievance and processed under the grievance procedure.

No permanent transfer from one department to another shall be made except with the consent of the employee in-
[fol. 26] volved, which shall be in writing.

Employees transferred to a new department created by the Company shall, upon closing of the department, have the right to return to the department from which transferred and shall retain the seniority which such employee would have had had they remained in their original department, provided, however, that in the event such employee has been in the new department for one year, then he shall lose his seniority in his old department.

(k) In increasing working forces according to seniority, employees laid off will be notified by the present method of contact, or by telegram, or registered letter at the employee's last known address, and they will be expected to report as directed. Failure to do so or failure to accept the job offered, subject to the provisions above shall forfeit their seniority rights. However, in cases of inability to do so and upon immediate notification to the Company of this fact, they will be given five (5) additional days. Employees who are unable to return within this five (5) day period, because of sickness or accident, will be given additional time within which to report, such time not to exceed the period that such disability, as shown by acceptable medical evidence, prevents their return to work.

[fol. 27] (l) No employee outside of the bargaining unit will be used on work of the same nature as that performed by employees in the bargaining unit where a result is to deprive an employee within the unit of work, except when a foreman must break in new operators on a new job, or temporarily in an operator's place who has failed to show up for work, or relieved due to injury or sickness.

(m) Employees with established seniority who are working on the night shift will be part of the seniority group comprised of day and night shift employees may, whenever a day shift job becomes permanently vacant in such seniority group, (subsequent to the date they last began work on

the night shift), transfer to the day shift job provided: (1) no employee of greater departmental seniority requests it; (2) provided the man can perform the job or qualify within a reasonable time. Not to exceed thirty (30) days shall be considered a reasonable time unless the Company and the Union mutually agree to extend such time. In the event the Union or the employee involved feels that the Company has acted unfairly or arbitrarily, then this may be treated as a grievance and processed under the grievance procedure.

VACATIONS

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[fol. 28]

LEAVE OF ABSENCE

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JURY DUTY

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SEPARATION ALLOWANCE

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SICKNESS AND ACCIDENT POLICY

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LIFE INSURANCE

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STATE OR FEDERAL STATUTES

26. Nothing in this Agreement shall require the Company or the Union to take any action which shall be unlawful by reason of any applicable present or future state or federal statute.

MILITARY SERVICE

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[fol. 29]

BULLETIN BOARDS

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HOSPITAL-SURGICAL-MEDICAL, POLIO AND DIAGNOSTIC INSURANCE

• • • • • • • •

WORKING CONDITIONS

30. This instrument constitutes the entire contract between the parties hereto, and the Company, the Union, and its members will abide by it. Its provisions and the rights of the parties shall in no way be altered by reason of any by-laws, rules, regulations or customs of the Union. The Company shall not be bound to grant any additional demands which may be made by the Union upon the Company, except to comply with the terms hereof.

SAFETY

31. The Company will continue its present policy in regard to the safety committee, provided, however, that the stewards may bring ideas or complaints directly to the general manager and the stewards may be invited to discuss such ideas with the safety committee.

[fol. 30]

WAGES

• • • • • • • •

ADJUSTMENT OF GRIEVANCES

33. (a) A shop committee composed of not more than six (6) employees shall be designated by the Union for the purpose of handling grievances. Meetings between this shop committee and the Company representative shall be arranged between these two groups on a mutually satisfactory basis.

(b) Any grievance must be presented within fourteen (14) days of the occurrence giving rise to such grievance, excluding the date of such occurrence, or within fourteen (14) days of the time the Union has knowledge, or should

have had knowledge of such grievance, or it shall be considered completely waived.

(c) Grievances shall be handled in the following manner:

(1) Between the foreman and the aggrieved employee with or without the show steward, provided, however, that the union can bring the grievance if the employee involved refuses to file such grievance.

(2) Between the general manager and the aggrieved em- [fol. 31] ployee with the department steward and/or the chief steward, or a member of the bargaining committee in the absence of the chief steward.

(3) If said adjustment of such grievance shall not thereby have been reached, it shall be handled by the grievance committee, with or without a national representative of the Union, and designated Company representatives. At this stage, the grievance shall be presented in writing, and when and if settlement is reached, said settlement shall be written out on the back of the grievance sheets and signed by both parties.

(4) If the grievance is not then settled within three (3) days, the shop committee may call on national representatives of the Union to assist in the settlement of such grievance.

(5) In the event a dispute shall arise between the Company and the Union with reference to the proper interpretation or application of the provisions of this contract and such dispute cannot be settled by mutual agreement of the parties, such dispute shall be referred to a board of arbitration upon the request of the Union. Said board of arbitration shall consist of three (3) members, one of whom shall be appointed by the Company and one by the Union and the third member shall be appointed by the two members so selected. In the event the two members first chosen cannot [fol. 32] agree upon a third member within three (3) days after the second member has been chosen, either party may request the United States Mediation and Conciliation Service to submit a list of five (5) names. Each party shall alternately strike a name until one name remains which shall be the name of a third arbitrator of the dispute. Said

Arbitration Board shall have authority only to interpret and apply the provisions of this contract. Its award shall be in writing and shall be binding upon the Company and the Union and upon the employees involved.

The party requesting arbitration shall give written notice of that fact to the other party and shall in such notice furnish the name of its arbitrator, and the opposing party shall within twenty-four (24) hours thereafter appoint its arbitrator and give notice in writing to the other party. The parties shall divide the expense of the third arbitrator.

HIDE TAKE UP GANG

34. (a) There shall be gang seniority only within the hide take up gang. The present employees within the gang shall agree upon a seniority list among themselves, which list will not show dates of employment, but only show the chronological order of the present employees within the gang.

[fol. 33] (b) The hide take up gang shall be paid at the rate of 17½ cents per hide for taking up and loading. This method of payment is in lieu of all fringe benefits, hourly rates, and premium pay provided for herein for other employees within the bargaining unit.

(c) All portions and articles of this contract shall apply to employees within the hide take up gang, except paragraphs 10 through 20 shall not apply to such employees, nor shall paragraphs 23 through 27, nor paragraphs 29 and 32.

TERMINATION

35. Except as herein otherwise provided, all of the provisions of this Agreement shall take effect as of the date of the execution hereof and shall continue and remain in effect until October 1, 1961, and from year to year thereafter, provided, however, that this Agreement may be terminated effective on October 1, 1961, or effective on October 1, of any year thereafter by either party on written notice mailed by registered mail to the Company at its office in Sioux City, Iowa, or to the Union at the office of the Director of the United Packinghouse, Food and Allied Workers, AFL-CIO, at Des Moines, Iowa at least sixty (60)

days prior to October 1 of any year thereafter. If notice is given by the Company to the Union, the envelope containing the notice shall be addressed to the Director of the [fol. 34] United Packinghouse, Food and Allied Workers, AFL-CIO at his office in Des Moines, Iowa.

Executed at Sioux City, Iowa on this 1st day of October, 1960.

SIOUX CITY DRESSED BEEF COMPANY,
A DIVISION OF NEEDHAM PACKING
COMPANY, INC.

By Jerry P. Kozney
Vice-President (s/s/

UNITED PACKINGHOUSE, FOOD AND
ALLIED WORKERS, AFL-CIO

Ralph Helstein
International President (s/s)

G. R. Hathaway
International Sec'y-treas. (s/s/)

Dave Hart
District Director (s/s/)

John Davidchik
Field Representative (s/s/)

[fol. 35]

COMMITTEE

Richard J. Weathers
(s/s)

Antona Stamoulis
(s/s)

Emery Hines
(s/s)

Alex Thomas
(s/s)

Henry Hofeldt
(s/s)

Vergil Sherman
(s/s)

[fol. 36]

EXHIBIT "B" TO PETITION

COPY TO THE INTERNATIONAL OFFICE FORM NO. 12 UPWA

GRIEVANCE REPORT NO. 1-A

UPWA LOCAL 721 COMPANY Sioux City Dressed Beef

ADDRESS Sioux City, Iowa

Date 7-5-61 DEPARTMENT Beef Kill RATE OF PAY

NAMES AND CLASSIFICATION OF EMPLOYEE(S) INITIATING GRIEVANCE

STATEMENT OF GRIEVANCE: The Grievance Committee is requesting the reinstatement of Anton Stamoulis with full seniority rights and pay for all time lost because of the fact that he was improperly discharged.

2. FACTS AS AGREED UPON BY BOTH PARTIES

3. ISSUE (THE POINTS OF FACT AND PRINCIPLE ON WHICH THERE IS DISAGREEMENT BETWEEN THE PARTIES.)

We, the undersigned employees involved in the grievance, specifically authorize the Union as our collective bargaining agent to make any settlement of this grievance which they believe is justified under all the facts and circumstances of the case as they may be developed through the various steps of the grievance procedure.

.....

.....

If additional space is needed for Items 1, 2 and 3 use a separate sheet of paper and attach to this report.

[fol. 37]

Exhibit "C" to Petition

COPY TO THE INTERNATIONAL OFFICE — FORM NO. 12 UPWA

GRIEVANCE REPORT NO. 2-A

UPWA LOCAL 721 COMPANY S. C. Dressed Beef ADDRESS Sioux City, Iowa

DATE 7-5-61 DEPARTMENT General Grievance RATE OF PAY

NAMES AND CLASSIFICATION OF EMPLOYEE(S) INITIATING GRIEVANCE

STATEMENT OF GRIEVANCE

The Grievance Committee is requesting the reinstatement of all the following employees with full seniority rights and full pay for all time lost because of the fact that they were improperly discharged:

Abbe, William
Anstine, Charles A.
Armstrong, Paul D.
Betu, Joseph B.
Bambin, John
Bekish, Anton
Bekish, Max
Bell, Raymond
Blatchford, Donald K.
Blick, Arie H.
Bolen, William
Brandt, Raymond C.
Boykin, Alfred
Boykin, George
Cameron, Ralph
Campbell, Richard R.
Capers, Oscar D.
Carter, Gilbert
Christianson, Harold
Clift, William
Clifton, William R.
Conway, Louis C.
Covall, Norman
Cowan, Chuck
Cowan, Jerry
Coy, Howard W.
Crawford, Alfred
Crichton, Hubert D.
Crosley, Ross E.
Crowe, Bernard E.
Daniels, Preston
Defasio, Anthony
Richmond, Perry
Rippatoe, A. J.
Risner, Cecil
Robinson, Allen
Schmid, Thomas
Schager, Buell
Schager, Dale
Schexnayder, Walter
Schlezes, Anton
Schrader, James W.
Dutches, Roger
Tuttle, Dale
Ellington, Lonnie
Fields, Mark
Verschoor, Donald
Denney, Harry
Desy, Fred
Dickson, Robert
Fickson, Theo E.
Engel, Melvin D.
Fellwock, Gary P.
Findeisen, Richard
Fowler, Virgil
Frigge, Roman A.
Gomez, Paul R.
Fritz, Arthur D.
Fritz, Earl
Gorsham, Fred
Orsett, Olin
Goulette, Delmar
Grillet, W. W.
Guthmiller, Benjamin
Handke, Joseph
Handke, Melvin
Handke, Portis
Hardgraves, Althemous
Heikes, Dick H.
Henkel, Dale
Henkel, Leon E.
Henkel, Lyle
Hines, Emery
Hinkel, Donald R.
Hints, William F.
Hirshert, Francis
Hledik, E. V.
Shaffer, Edward E.
Shelby, Archie
Shermah, Virgil
Skarnoulis, Al
Skinner, Roy
Smith, Albert
Smith, William
Soloman, Darwin D.
Steinhouser, Ralph
Stevens, William
Twits, Edwin
Stokes, Arthur J.
Smith, Harold
Fondell, James
Pejar, Duane
Hofeldt, Henry
Hoffman, Taft
Horsley, Loren G.
Howard, Robert M.
Hunter, H. M.
Hunter, Rollin L.
Jacobson, John A.
Jager, John G.
Johnson, Clayton
Johnson, Donald
Johnson, Hugh
Johnson, Lenerd
Johnson, Marvin
Johnson, Roger
Jones, Eddie
Jones, Ernest O.
Kern, Robert
Kinnsman, Leo W.
Lemaak, Norman
Larson, Roger
Law, Frank C., Jr.
Leigh, Franklin
Leigh, Richard W.
Lightner, Elvin
Lightner, Harry
Lightner, James
Lockhart, John
Losback, William
Lubanski, Louis
Mann, Donald
Martin, Marion
Stokes, Arthur W.
Streeter, Robert
Stub, Robert
Taubert, Dean

Thomas, Alex	Monk, Richard	Nieman, Albert	Vander Lieth, Henry
Thomas, Marion	Monk, Wayne	Norton, Robert	Wabasha, William
Tobasco, Alex	Meddy, Bert	Nunn, Clarence	Wagner, Allen
Tolliver, Sylvester	Moore, Jerry	O'Dell, Paul	Wagner, Marvin
Tracy, James	Myers, John H.	Ohl, Jack	Wagner, Wallace L.
Tracy, Joseph	McGarr, Francis A.	Owens, Edward	Walding, Phillip
Thompson, Roger	McKenna, Kenneth	Pastz, John H.	Weathers, Richard
Richmond, John	McLane, Neil Jr.	Pinney, Jack	White, Fred
Thomas, Jetson	Nassiff, George J.	Plueger, Ronnie	Williams, Franklin
Matney, Edward	Nelson, Garry L.	Pojar, Patrick	Wilson, Clyde H.
McKelvey, Robert	Niebuhr, Charles	Porter, William A.	Windsor, George N.
Millage, Ronald R.	Nielsen, Cleone J.	Prince, Paul	Wink, Raymond
Miller, Glenn	Nielsen, Kendall	Reed, Francis L.	Yates, Herb
Monk, Larry	Nielsen, Llan	Volosban, John	Zimmerman, Carl

We, the undersigned employees involved in the grievance, specifically authorize the Union as our collective bargaining agent to make any settlement of this grievance which they believe is justified under all the facts and circumstances of the case as they may be developed through the various steps of the grievance procedure.

If additional space is needed for Items 1, 2, and 3 use a separate sheet of paper and attach to this report.

[fol. 38]

EXHIBIT "D" TO PETITION

July 5, 1961

Mr. Lloyd Needham, President
Sioux City Dressed Beef Co.
1911 Warrington Road
Sioux City, Iowa

Attention: Mr. Needham:

Enclosed find copies of Grievances Nos. 1-A and 2-A that we are requesting be processed through the provisions of Section 33, of the Agreement between your Company and Local 721, UPWA, AFL-CIO.

With reference to Grievance No. 1-A it has been previously processed through steps (1) and (2) of (c) of Section 33 and we are desirous that it be placed in step (3) of (c) of Section 33.

As to Grievance No. 2-A since the Company was requested that it be processed in Step (1) of (c) of Section 33 by Anton Stamoulis in a telephone conversation with Mr. Needham on June 28th, 1961 and since Mr. Stamoulis was subsequently advised by Mr. Jesse Marshall, attorney for the Company, that the Company's position was that they would not discuss the grievance because the issue was a matter of unfair labor practice charges filed by the Union, pending before the N.L.R.B., we are advising you that we are withdrawing our charges that have been filed with the N. L. R. B. and are requesting that we immediately proceed to handle the matter in line with the provisions of Section 33 of the Agreement. We are further assuming that your answer to Grievance No. 2-A is negative insofar as steps (1) and (2) of (c) of Section 33 are concerned and are therefore filing a written grievance on this matter as provided for in (3) of (c) of Section 33.

We are requesting an immediate reply as to your position with respect to the further processing of the above mentioned grievance and are willing to meet at your earliest

convenience for the purpose of concluding this matter as provided in Section 33 of the Agreement.

Awaiting an immediate reply, I remain

Very truly yours,

John Davidchik
Field Rep., UPWA, AFL-CIO

JD/jim
upwa 13
cc to: Dave Hart, Director
Eugene Cotton, Attorney
R.R.R.R.

[fol. 39]

EXHIBIT "E" TO PETITION

METROPOLITAN COUNCIL NO. 13
U. P. W. A.-C. I. O.

915 FOURTH STREET PHONES 8-5646—8-4043
SIOUX CITY 1, IOWA

July 12, 1961

Mr. Lloyd Needham, President
Sioux City Dressed Beef, Inc.
1911 Warrington Road
Sioux City, Iowa

Attention: Mr. Needham

Under date of July 3, 1961 a communication was sent to you with reference to Grievances Nos. 1-A and 2-A requesting that they be placed in step (3) of (c) of Section 33 of the Agreement between your Company and Local 721, UPWA, AFL-CIO.

Section 33 provides under (4) of (c) of this section that if a grievance is not settled within 3 days after it is placed in (3) of (c) of Section 33, that it be advanced to (4) of (c) of Section 33. Since we have not heard from you as to

the above grievances since we sent our letter of July 5, 1961, and since the 3 day period provided in (4) of (c) of Section 33 has elapsed, we are assuming that your answer is in the negative and we are therefore requesting that you consider that Grievances Nos. 1-A and 2-A as pending in step (4) of (c) of Section 33 and are requesting that a meeting as outlined in (4) of (c) of Section 33 be held immediately for the purpose of handling the above mentioned grievances. We are prepared to meet for this purpose at any time.

We wish to further state that in the event that we do not hear from you in the course of the next several days that we will consider your position to be again negative and in that event that the grievances be considered as having been processed through steps (1) through (4) of (c) of Section 33 and be pending in (3) of (c) of Section 33.

Again requesting an immediate reply as to your position, I remain

Very truly yours,

John Davidchik, Field Rep.
Dist. 3, UPWA, AFL-CIO

JD/j
upwa 13
RRRR
cc to: Dave Hart
Eugene Cotton

[fol. 40]

EXHIBIT "F" TO PETITION

METROPOLITAN COUNCIL NO. 13
U. P. W. A.-C. I. O.

915 FOURTH STREET PHONES 8-5646—8-4043
SIOUX CITY 1, IOWA

August 10, 1961

Mr. Lloyd Needham, President
Sioux City Dressed Beef Company
1911 Warrington Road
Sioux City, Iowa

Dear Sir:

The Sioux City Dressed Beef Company has been requested previously to process pending Grievances No. 1-A and 2-A in accordance with Section 33 of the collective bargaining agreement in effect between such Company and Local 721, United Packinghouse, Food and Allied Workers, AFL-CIO.

No agreement with respect to Grievances No. 1-A and 2-A having been reached in steps one through four of the collective bargaining agreement as provided in Section 33 (c)(1) through 33 (c)(4) of such agreement, we hereby request arbitration of Grievances No. 1-A and 2-A in accordance with Section 33 (c)(5) of the Agreement. In accordance with Section 33 (c)(5), we hereby give notice that the Union has designated Charles Fischer, as its member of the Arbitration Board, and the Union hereby offers to pay one-half the expense of the third arbitrator.

We remind you that Section 33 (c)(5) requires the Company within twenty-four hours to appoint its arbitrator

and to give written notice to the Union. Would you please advise promptly as to the Company's designation.

Very truly yours,

John Davidchik, Field Rep.
Dist. 5, UPWA, AFL-CIO

JD/j
upwa 13
cc to: Dave Hart
Eugene Cotton
R.R.R.R.

[fol. 41]

EXHIBIT "G" TO PETITION

(Letterhead of Sioux City Dressed Beef Co.,
Sioux City, Iowa)

July 11, 1961

Mr. John Davidcheck

Dear Sir:

Please be advised that we are declining your request of July 5, 1961 to process certain alleged grievances. Your organization and members by your conduct have repudiated and terminated the labor agreement with this Company dated October 1, 1960.

We decline to deal with your organization further because of your action and, moreover, do not recognize your organization as the majority representative of our employees.

Very truly yours,

/s/ LLOYD L. NEEDHAM

[fol. 42]

IN THE DISTRICT COURT OF WOODBURY COUNTY

DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, LEGAL DEFENSES AND COUNTERCLAIM—Filed September 13, 1961

Answer

Division I

Comes Now, defendant and for answer says:

1. Admits Paragraph 1 except that defendant states that it has no knowledge as to whether or not plaintiff admits to membership any employees of defendant. Defendant denies that plaintiff is the collective bargaining representative of any employees of defendant. Defendant has no knowledge as to whether or not plaintiff represents any employees in an industry affecting commerce, as referred to in said paragraph.

2. Admits Paragraph 2.

3. Answering Paragraph 3, defendant admits that on or about October 1, 1960, it entered into a contract, copy of which is attached to plaintiff's petition as Exhibit "A". Defendant denies, however, that such agreement is now or at any time material to this cause was in effect.

4. Admits Paragraph 4, except denies that the portions of the contract, Exhibit "A", set out in said paragraph, contain all of the material parts of said agreement relative to grievance procedure.

[fol. 43] 5. Answering Paragraph 5, and particularly the statement therein to the effect that on or about May 17, 1961 defendant discharged approximately 191 persons within the collective bargaining unit, defendant states that on or about said date the said 191 persons therein referred to, being then on strike, refused to return to the employ of defendant and thereupon ceased to be employees of defendant.

Denies that grievances, Exhibits 1-A and 2-A were duly presented to the defendant in accordance with provisions of the contract.

6. Answering Paragraph 6, defendant admits that plaintiff in the said "grievances" made the contention as alleged in said paragraph.

7. Answering Paragraph 7, defendant denies that plaintiff has complied with the grievance procedure provided by Section 33 of Exhibit "A". Defendant admits that Exhibit "D" and Exhibit "E" attached to the petition, are correct copies, and that Exhibit "G", referred to in Paragraph 7 and further in paragraph 9, is a correct copy. Defendant further denies that plaintiff has attempted or has been ready "at appropriate times" to process the grievances therein referred to.

8. Answering Paragraph 8, defendant denies that plaintiff has at any time requested arbitration of the said grievances in accordance with the provisions of Section 33 of said contract, Exhibit "A". Other statements in said paragraph are admitted except defendant denies that the action [fol. 44] of plaintiff in connection therewith has at any time been in accordance with the provisions of the contract referred to therein.

9. Denies Paragraph 9, except admits that Exhibits "B", "C" and "G", referred to therein, are correct copies.

10. Denies Paragraphs 10 and 11.

Division II

First Affirmative Defense

1. On or about May 11, 1961, plaintiff and its members struck against defendant by leaving their jobs and setting up a picket line in front of defendant's premises.

2. The said strike was contrary to the definite provisions of Paragraph 9 of its contract, Exhibit "A".

3. The said strike and picketing has been continuous since May 11, 1961.

4. The breach of contract by plaintiff has been and is now treated by defendant as terminating its obligations under said contract.

Division III

Second Affirmative Defense

1. With respect to the alleged grievance of Anton Stamoulis (Exhibit 1-A), defendant is relieved from any obli- [fol. 45] gation to process the same by reason of the fact that immediately upon announcing his discharge defendant and plaintiff proceeded to process the said alleged grievance as provided in Paragraph 33 of contract, Exhibit "A" and accomplished steps 1 and 2 of said procedure. Thereupon, the plaintiff refused to proceed further with said grievance procedure and caused a work stoppage and strike. The election of a strike constituted a waiver of any right to proceed further on said alleged grievance 1-A.

Division IV

Third Affirmative Defense

1. Respecting the alleged grievance 2-A, defendant states that the persons therein referred to, voluntarily struck in violation of the provisions of Paragraph 9 of the contract, Exhibit "A" and by their own election ceased to be employees of the defendant or to be entitled to the benefits of grievance and arbitration procedure, or any other provisions of the contract.

Division V

Fourth Affirmative Defense

1. Plaintiff and its members have waived their right to rely upon the grievance and arbitration procedure provided in Paragraph 33 of the contract, Exhibit "A", by filing [fol. 46] a complaint involving the same subject matter with the National Labor Relations Board.

Division VI

First Legal Defense

1. The petition of plaintiff fails to state a cause of action upon which the relief asked, or any relief, can be awarded for the reason that as shown by the petition, and particu-

larly Paragraph 5 thereof, it appears that the occurrences upon which the said grievances are based occurred "on or about May 17, 1961" and that as shown by Paragraphs 7 and 8 and Exhibits "B", "C", "D" and "E" of the petition, the said grievances were not presented until July 5, 1961. Paragraph 33(b) of the contract, Exhibit "A" states as follows:

> "33. (b) Any grievance must be presented within fourteen (14) days of the occurrence giving rise to such grievance, excluding the date of such occurrence, or within fourteen (14) days of the time the Union has knowledge, or should have had knowledge of such grievance, or it shall be considered completely waived."

[fol. 47]

Division VII

Second Legal Defense

1. The petition of plaintiff fails to state a cause of action upon which the relief asked, or any relief, can be awarded for the reason that as shown by said petition the arbitration agreement referred to therein was wholly executory and under the law of Iowa such agreements will not be specifically enforced.

Division VIII

Third Legal Defense

1. This Court is without jurisdiction of the plaintiff's alleged cause of action for the reason that the said action involves "unfair labor practices" under the exclusive jurisdiction of the National Labor Relations Board under the provisions of the Federal Labor Management Relations Act.

Counterclaim

By reason of the illegal strike in violation of its contract as alleged in first affirmative defense, defendant has been damaged in the sum of $150,000.00.

Wherefore, defendant prays that the petition of plaintiff be dismissed; that the Court hold that the petition does not

[fol. 48] state a cause of action upon which the relief asked, or any relief, can be granted; that defendant have judgment in the sum of $150,000.00 damage, and for costs and any other appropriate equitable relief.

IN THE DISTRICT COURT OF WOODBURY COUNTY

PLAINTIFF'S REPLY TO AFFIRMATIVE DEFENSES, REPLY TO LEGAL DEFENSES AND ANSWER AND AFFIRMATIVE DEFENSE TO COUNTERCLAIM—Filed November 9, 1961

Reply to Affirmative Defenses

Plaintiff replies to the Affirmative Defenses heretofore filed by defendant as follows:

Reply to First Affirmative Defense

1. Replying to Paragraph 1 of defendant's First Affirmative Defense, plaintiff denies that it, on or about May 11, 1961, or any other relevant time, struck against defendant or set up a picket line in front of defendant's premises, as alleged in said Paragraph 2 of defendant's First Affirmative Defense. Plaintiff admits that certain of defendant's employees within the bargaining union, represented by plaintiff, left their jobs at defendant's plant on or about May 11, 1961, but plaintiff denies that it authorized any such action by said employees. Replying further, plaintiff [fol. 49] states that said employees were compelled to leave their work by reason of the repeated and then existing prior breach of the collective bargaining agreement. Replying further, plaintiff states that any question concerning the relevance of any alleged strike to the grievances on which plaintiff seeks to compel arbitration relates the merits of the grievances; and all such questions are for determination solely by the arbitrator selected to hear and determine the grievances in accordance with the collective bargaining agreement (Exhibit "A" attached to the Complaint). Replying further, plaintiff states that no questions concerning an alleged strike have any relevance to the cause of action to compel arbitration asserted in Complaint, and no

such questions can properly be determined by this Court in this proceeding.

2. Plaintiff denies the allegation of Paragraph 2 of defendant's First Affirmative Defense. Replying further, plaintiff states that any questions concerning an alleged strike concerns the merits of the grievances and must be determined solely by the arbitrator and may not be determined by this Court in this proceeding.

3. Plaintiff denies the allegation of Paragraph 3 of defendant's First Affirmative Defense.

4. Insofar as Paragraph 4 of defendant's First Affirmative Defense attempts to allege any statement of fact or any [fol. 50] conclusions based upon fact, rather than defendant's state of mind, plaintiff denies each and every fact or conclusion set forth in said Paragraph. Replying further, plaintiff alleges that any questions concerning an alleged breach of contract by plaintiff or prior breach by defendant or the effect of any alleged breach of contract upon defendant's obligations, concern the merits of the grievances which the Complaint seeks to compel the defendant to arbitrate, and any such questions must be determined solely by the arbitrator, and may not be determined by this Court in this proceeding.

Reply to Second Affirmative Defense

1. Plaintiff admits that the grievance of Anton Stamoulis was processed through Steps 1 and 2 of the grievance procedure as provided in Section 33 of the collective bargaining agreement, but plaintiff denies each and every other allegation contained in defendant's Second Affirmative Defense. Replying further, plaintiff states that any questions concerning any alleged waiver of plaintiff's right to arbitrate said grievance concerns the merits of the grievance and any such questions must be determined solely by the arbitrator and may not be determined by this Court in this proceeding.

[fol. 51]

Reply to Third Affirmative Defense

1. Plaintiff denies each and every allegation contained in defendant's Third Affirmative Defense. Replying further, plaintiff states that any questions concerning an alleged strike by persons listed on Grievance 2-A and the effect of such an alleged strike concern the merits of said grievance, and any such questions are for determination solely by the arbitrator and not by this Court.

Reply to Fourth Affirmative Defense

1. Plaintiff admits that a charge complaining of violation by defendant of the National Labor Relations Act, as amended, was filed with the National Labor Relations Board, but plaintiff denies that the filing of such charge waived any right under the collective bargaining agreement or that such charge has any relevance to the plaintiff's cause of action to compel defendant to arbitrate grievances as set forth in the Complaint.

Reply to Legal Defenses

Plaintiff replies to the Legal Defenses heretofore filed by defendant as follows:

Reply to First Legal Defense

1. Plaintiff denies that the provisions of Paragraph [fol. 52] 33(b) of the collective bargaining Agreement bar the relief requested and denies the plaintiff had failed in any manner to comply with the provisions of said paragraph, as alleged in defendant's First Legal Defense.

2. Replying further, plaintiff states that Paragraph 33 (b) of the collective bargaining agreement, set out in defendant's First Legal Defense, provides that grievances must be presented within fourteen (14) days of the occurrence " . . . or within fourteen (14) days of the time the Union has knowledge, or should have had knowledge of such grievance. . . . " Grievance No. 1-A (Exhibit "B" attached to the Complaint) was presented within fourteen

(14) days of the occurrence giving rise to said grievance, as defendant admits in its Second Affirmative Defense hereto filed. The presentation of said grievance on July 5, 1961, as alleged by defendant, constituted compliance by plaintiff with Step 3 of the grievance procedure (Paragraph 33(c)(3) of Exhibit "A" of the Complaint), which is the first step at which the grievance is required to be put in writing. No time limitation upon the presentation of grievances in writing at the third step is contained anywhere in the collective bargaining agreement.

3. Replying further, plaintiff states that it first acquired knowledge of the discharges forming the subject of Grievance No. 2-A (Exhibit "C" of the Complaint) on June 26, 1961, and that the filing of said grievance within fourteen [fol. 53] (14) days after such date, on July 5, 1961, constituted full compliance with the provisions of Paragraph 33 (b) of the agreement.

4. Replying further, plaintiff alleges that questions concerning the compliance with the provisions of Paragraph 33(b) of the agreement must be determined solely by the arbitrator and may not be determined by this Court.

Replying to Second Legal Defense

1. Replying to defendant's Second Legal Defense, plaintiff states that its complaint states a claim for relief under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. 185(a), for the violation of a contract between an employer and a labor organization representing employees in an industry affecting commerce as defined in said Act.

2. The law to be applied in a suit under said Section 301(a) is federal law only.

3. Agreements to arbitrate contained in collective bargaining agreements are, by virtue of Section 301(a) and the federal law applied thereunder, specifically enforceable irrespective of whether or not such agreements are executory.

4. By reason of the enactment by Congress of Section 301(a), Federal law has pre-empted the field of suits for violation of contracts between an employer and a labor organization representing employees in an industry affect- [fol. 54] ing commerce and State law not applicable in such suits.

5. By reason of the foregoing, any provisions or principles of the law of Iowa relating to the enforcement of executory agreements to arbitrate, having been superseded by Federal law to the contrary, are totally irrelevant to the claim for relief stated in the Complaint.

Reply to Third Legal Defense

1. Replying to defendant's Third Legal Defense, plaintiff states that the Complaint states a claim for relief under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. 185(a), for violation of contract by defendant. Section 301(a) specifically provides for suits for the violation of contracts, and has jurisdiction over such an action whether or not the activities of which Complaint is made constitute unfair labor practice under other, separate provisions of the Federal Statute. Further, plaintiff denies that the Complaint charges or complains of an unfair labor practice within the meaning of the Federal Statute.

Answer to Counterclaim

Plaintiff answers the counterclaim asserted herein by defendant as follows:

1. Plaintiff denies each and every allegation contained in [fol. 55] defendant's counterclaim and states that said counterclaim failed to state a claim for relief.

2. Said counterclaim failed to state a claim for relief by reason of the absence of allegations therein setting forth the nature of the claim.

3. Insofar as the reference in said counterclaim to allegations contained in defendant's First Legal Defense may require answer, plaintiff realleges its reply to said First Affirmative Defense, denying defendant's allegations contained therein.

Affirmative Defense to Counterclaim

1. Plaintiff states that no strike or picketing at defendant's plant was caused, authorized or sanctioned by it on or about May 11, 1961 or at any other relevant time. While certain of defendant's employees within the bargaining unit represented by plaintiff left their jobs at defendant's plant on or about May 11, 1961, said employees were compelled to leave their jobs by reason of defendant's repeated and continuous assignment of supervisory personnel to perform production work in the plant.

2. Said acts of defendant constituted direct violation of the collective bargaining agreement and amounted to a repudiation of said agreement by defendant.

3. By reason of the prior breaches and repudiation of [fol. 56] the collective bargaining agreement by defendant, defendant's employees' failure to work was not in violation of the collective bargaining agreement and said employees were excused from compliance with Section 9 thereof.

Wherefore, plaintiff prays for relief in accordance with the prayer of plaintiff's Petition and that the Counterclaim of defendant be dismissed.

In the District Court of Woodbury County

Amendment to Petition—Filed November 10, 1961

Leave of Court having been first obtained, Plaintiff amends his Petition as follows, to wit:

1. By deleting Paragraph 5 thereof and inserting therein the following new Paragraph 5; on or about May 11, 1961, the Defendant discharged employee Anton Stamoulis. A grievance protesting said discharge was thereupon duly presented to defendant and process through Steps 1 and 2 of the grievance procedure in accordance with Section 33 of the collective bargaining agreement (page 13 of Exhibit "A" attached hereto). Said grievance, requesting reinstatement of employee Anton Stamoulis to his position with full seniority rights and pay for time lost as a result [fol. 57] of his improper discharge, was thereafter reduced

to writing, designated as Grievance No. 1-A, and presented to defendant on or about July 5, 1961, in accordance with Section 33 of the collective bargaining agreement. A copy of said grievance is attached hereto as Exhibit "B" and incorporated herein by reference. On or about June 26, 1961, Defendant discharged the remaining approximately one hundred ninety (190) persons employed in positions within the collective bargaining agreement, and plaintiff first acquired knowledge of such discharges on or about such date. A grievance, requesting reinstatement and other relief for said employees, was duly presented to defendant. A copy of said grievance as reduced to writing and presented to defendant, designated as Grievance No. 2-A, is attached hereto as Exhibit "C" and incorporated herein by reference.

2. By deleting from Paragraph 6 thereof the following words, "on or about May 17, 1961" which words are found in the third line of the said paragraph.

Wherefore, plaintiff repeats the prayer of his original Petition.

[fol. 58]

IN THE DISTRICT COURT OF WOODBURY COUNTY

ANSWER TO PLAINTIFF'S AMENDMENT TO PETITION
—Filed November 14, 1961

Comes Now, defendant and for answer to plaintiff's amendment to petition, states:

1. Answering Paragraph 1 of said amendment, which is substituted for Paragraph 5 of the original Petition, defendant states:

As to the grievance (Exhibit "B" of plaintiff's Petition) relative to the alleged grievance of Anton Stamoulis, the said Stamoulis on the said May 11, 1961 left the defendant's premises and refused to proceed further with the grievance by putting the same in writing as provided by Section 33 (c)(3) and waived any further right to process the said grievance.

2. Answering the said amendment as to the alleged grievance of the 190 persons, shown on Exhibit "C" of plaintiff's Petition, defendant denies that it discharged the said persons on June 26, 1961, as alleged in said amendment, and alleges that on May 11, 1961 the said 190 persons and the said Anton Stamoulis left their jobs and the premises of defendant after being each notified that said action was a breach of contract. Defendant alleges further that on the 12th day of May, 1961, defendant addressed a letter to each of the 191 employees inviting them to return to work immediately and advising them that their leaving was in breach of contract and that if they did not immediately [fol. 59] return, their jobs would be filled by permanent replacements. The said letter further advised said employees that their alleged cause of leaving the work, to wit: the discharge of Anton Stamoulis, would be processed as a grievance under the terms of Section 33 of the contract Exhibit "A". Thereupon and on or about May 15, 1961, at a formal called meeting of plaintiff Union, plaintiff and its members unanimously rejected the offer of defendant that they return to work and that the Stamoulis matter be handled as a grievance, and the said plaintiff advised defendant on or about May 15, 1961 of their rejection. Defendant thereupon treated the rejection of its offer as a termination of the employment of each and all of the said 191 employees. Defendant specifically denies that it took any action on or about June 26, 1961 to discharge the said employees and alleges that they ceased to be employees upon such voluntary unanimous rejection on May 15, 1961 of defendant's offer to return to their employment and to process their alleged grievance.

[fol. 60]

APPLICATION TO THE COURT SEPARATELY TO HEAR AND DETERMINE POINTS OF LAW RAISED IN THE PLEADINGS UNDER R.C.P. 105—Filed January 10, 1962

Comes Now, defendant and applies to the Court under R. C. P. 105 to separately hear and determine points of law raised in the pleadings. The Court is asked to rule that:

1. Plaintiff is not entitled to the relief asked in this case for the reason that under Iowa law and procedure this

Court cannot specifically enforce an executory agreement to arbitrate.

2. Plaintiff is not entitled to the relief asked for the reason that it appears by the pleadings herein that any right to enforce the grievance and arbitration provisions of the contract between the parties, has been waived by plaintiff by

(1) Bringing an action before the NLRB to enforce its claimed rights; and

(2) Engaging in a "walkout" in violation of the contract, instead of relying on the agreement to arbitrate.

3. Plaintiff is not entitled to the relief asked for the reason that notice of grievance was served too late and under the contract, the right has expired.

IN THE DISTRICT COURT OF WOODBURY COUNTY

[fol. 61] That after oral hearing and submission of Briefs at Court on February 13, 1962, Judge George M. Paradise made the following ruling upon Defendant's Application to Hear and Determine Points of Law raised in the Pleadings under Rule 105, Rules of Civil Procedure:

RULING—February 13, 1962

The plaintiff commenced this case against the defendant and in its prayer for relief prayed that the Court enter an order enjoining defendants from failing and refusing to arbitrate certain grievances claimed by plaintiff and asking specific performance by defendant of an agreement to arbitrate contained in a collective bargaining contract between plaintiff and defendant, copy of which contract is set out in the plaintiff's petition.

Defendant has answered, admitting the contract and denying that plaintiff has complied with the grievance procedure set out in said contract and has alleged affirmatively that plaintiff and the employees represented by plaintiff in violation of their agreement to arbitrate grievances left

their jobs and set up a picket line in front of defendant's premises and that said strike is continuous. Defendant further pleads affirmatively that the strike was contrary to the provisions of Section 9 of the contract providing that,

> "... the employees shall not engage in and the Union [fol. 62] shall not call or sanction any slow down, work stoppage or strike ..."

and that by engaging in said "slow down, work stoppage or strike" plaintiff had waived the provisions of Section 33 of said contract providing for grievance procedure and binding arbitration of any dispute

> "between the Company and the Union with reference to the proper interpretation or application of the provisions of this contract ..."

Defendant in its answer further alleges that the right to arbitrate had been waived by the filing by plaintiff of an unfair labor practice charge against defendant with the National Labor Relations Board involving the matter in dispute between the parties.

Defendant further alleged that the application for specific performance of the arbitration provision in the contract came too late and was waived by the provision in the contract, Section 33(b),

> "Any grievance must be presented within fourteen (14) days of the occurrence giving rise to such grievance ... or it shall be considered completely waived."

Plaintiff filed reply in which it is admitted that the em- [fol. 63] ployees represented by the plaintiff

> "Left their jobs at defendant's plant on or about May 11, 1961."

Plaintiff's reply further admits that it filed a charge complaining of violation by defendant with the National Labor Relations Board.

By amendment, plaintiff amended its answer, striking Paragraph 5 thereof wherein it was alleged that defendant

discharged 191 persons on or about May 17, 1961, and striking from Paragraph 6 of the petition the date May 17, 1961 and substituting therefor an allegation that the said discharges occurred on June 26, 1961.

In ruling upon an application to determine points of law raised by the pleadings, the Court can consider only matters alleged as facts by the plaintiff or alleged by defendant and not denied by plaintiff. Matters on which there is a dispute as to the facts and on which evidence is necessary, cannot be determined by the Court on rulings on points of law. It is apparent to the Court that plaintiff and defendant had entered into a collective bargaining agreement, copy of which is set out as Exhibit "A" attached to plaintiff's petition, and that such contract provided, in Sections 9 and 33 thereof, that the parties would not engage in or sanction any slow down, work stoppage or strike and no [fol. 64] lockout during the period of the agreement. As quid pro quo therefor, the contract provides in Section 33 thereof a complete provision for "adjustment of grievances" by setting up a procedure for adjusting and handling any dispute between the parties with reference to the proper interpretation or application of the contract. Said procedure consists of a five-step process for handling grievances, terminating in binding arbitration. In other words, the contract was obviously intended to provide a peaceful method for settling any and all disputes between the parties relative to interpretation or application of any of the provisions of the contract and to render unnecessary or improper on the part of either party of a resort to economic pressure, such as a slow down, walkout or lockout. It is apparent from the pleadings and facts therein alleged, or not denied, that a dispute between the parties relative to the "interpretation or application" of the provisions of the contract did arise and that the employees represented by plaintiff did engage in a walkout and did file charges of unfair labor practice with the National Labor Relations Board. With the merits of the controversy, this Court is not at this time concerned.

Law Points Raised by Defendant

Defendant has made application to the Court to rule as a matter of law that:

1. Plaintiff is not entitled to specific performance of [fol. 65] the agreement to arbitrate the dispute for the reason that the agreement is at this time executory and that under Iowa law and procedure an executory agreement to arbitrate will not be specifically enforced.

2. Plaintiff is not entitled to specific enforcement of the arbitration provision in the contract by reason of having waived such agreement by engaging in a slow down or walkout contrary to the provisions of its contract and by reason of having filed unfair labor practice charges regarding the dispute with the National Labor Relations Board. Defendant claims that plaintiff has made an election of remedies and cannot thereafter resort to arbitration.

3. Defendant claims that the application for arbitration by plaintiff comes too late since the petition of plaintiff claims that the discharges occurred on May 17, 1961 and the grievance applications, attached to the petition as Exhibits "B" and "C", show that they were presented July 5, 1961 and more than fourteen (14) days after the "Occurrence giving rise to such grievance" as provided by Section 33(b) of the contract.

The Court heard oral arguments of the parties on the question of ruling on law points and the parties filed written briefs which have been carefully considered by the Court, and the Court now makes the following:

[fol. 66] Ruling on Law Points

Law Point Three

Following the filing by defendant of its application to rule on law points, plaintiff amended its petition so as to allege that the discharges complained of occurred June 26, 1961 instead of May 17, 1961 and, therefore, within fourteen (14) days of such occurrence.

Since the Court can rule as a matter of law only upon facts stated or admitted in the pleadings, it must be taken

as true for the purpose of this ruling that the occurrence complained of occurred within the said fourteen (14) day period, and, therefore, the third point raised by defendant is not sustained and the Court finds and rules as a matter of law that the notices of grievance were not served too late under the terms of the contract.

Ruling on Law Point One Raised by Defendant

Defendant contends in Law Point One that the plaintiff is not entitled to the relief asked, for the reason that under the law and precedence binding upon an Iowa Court specific performance of an executory agreement to arbitrate cannot be granted.

It is apparently conceded by both parties, and the research by the Court makes it clear, that the rule at common [fol. 67] law, and in a large majority of the States, was and is that an executory agreement to arbitrate will not be specifically enforced. As stated in 3 Am. Jur. "Arbitration and Award" Section 31,

> "It is settled at common law that a general agreement, in or collateral to a contract, to submit to final determination by arbitrators the rights and liabilities of the parties with respect to any and all disputes that may thereafter arise under the contract is voidable at will by either party at any time before a valid award is made, and will not be enforced by the courts."

The same rule is announced by 6 C.J.S. "Arbitration and Award" Section 33 and by the following Iowa cases:

Oskaloosa Sav. Bank v. Mahaska Bank, 205 Iowa 1351, 219 N. W. 530, 60 A. L. R. 1204

Read v. State Ins. Co., 103 Ia. 307, 72 N. W. 665

Donald v. C. B. & Q. Ry. Co., 93 Ia. 284, 61 N. W. 971

Ames Canning Co. v. Dexter Seed Co., 195 Ia. 1285, 190 N. W. 167

In the Ames case, supra, the Iowa Supreme Court said,

> [fol. 68] "The right of a party to a mere naked agreement for submission of a controversy to arbitration, to revoke it at any time before decision has been reached or an award made is recognized by the weight of authority."

It is contended, however, by the plaintiff that Section 301(a) of the Labor Management Relations Act, providing for enforcement of labor contracts in Federal Court, has changed the common law rule and that the Federal law is now binding on State Courts.

Section 301(a) Labor Management Relations Act is as follows:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."
>
> (1947 Taft-Hartley Amendment).

This statute was interpreted by the United States Supreme Court in 1956, Textile Workers v. Lincoln Mills, [fol. 69] (353 U. S. 448, 32 L. C. 70, 733), as authorizing the Federal Court to specifically enforce an arbitration agreement. It is noted that nothing in this statute refers to State Courts or purports to be binding in the case of State procedure.

It must conceded that there is a conflict of authority on the question of whether or not Section 301(a) Labor Management Relations Act, as interpreted in the Lincoln Mills case is binding upon State Courts. Both State and Federal Courts are in conflict on the matter. So far as this Court is able to determine the matter has not been authoritatively passed upon by the United States Supreme Court, and, therefore, this Court deems itself bound to follow Iowa precedence and holds as a matter of law that plaintiff is

not entitled to specific performance of the agreement to arbitrate disputes.

Ruling on Law Point Two Raised by Defendant

Defendant's second point of law is that plaintiff has waived its right to arbitrate by

1. Indulging in a walkout and picketing in violation of the terms of its contract; and

2. By filing an unfair labor practice charge with the National Labor Relations Board concerning the dispute in question.

Defendant contends that there has been an election of remedies and plaintiff cannot, after having agreed not to strike and to arbitrate differences, pursue a remedy incon- [fol. 70] sistent with arbitration, and to do so is to forfeit and waive such right.

It is abundantly apparent to the Court that by the terms of the contract between the parties, it was intended that a dispute such as occurred in this case would be settled by the grievance and arbitration procedure set out in the contract. It is equally clear that the plaintiff and its members chose to disregard the arbitration provision and engaged in a walkout. Even though it is alleged that the Union officers advised against the walkout, it, nevertheless, occurred and the Union is apparently supporting the action of the employees. There is no substantial dispute here as to the facts. Plaintiff argues that there was no waiver for the reason that the question of whether or not the action taken by the employees was right or wrong is a matter that should be determined by arbitration since it involves the interpretation and application of the contract. Plaintiff argues that the arbitrator and not the Court sh 'd determine whether the walkout was a violation of the terms of the contract or whether it may have been justified by conduct on the part of defendant. The fact is, however, that this Court is not concerned for the present purpose with whether or not the walkout was justified or whether or not filing a claim with the National Labor Relations Board was not a matter that the arbitrator could have determined.

[fol. 71] This Court is only concerned with the fact that the plaintiff *did* do these things, and the law is clear that where the parties have agreed to arbitrate and that agreement is a quid pro quo for an agreement not to strike or to lockout, the election to strike or lockout constitutes a waiver and election of remedies. Having elected, the parties may not thereafter resort to the remedy which they have waived.

In this case the law seems to be abundantly clear.

A very good case which states the doctrine clearly is Cuneo Press v. Kokomo Paper Handlers (U.S.C.A. 7th (1956) 30 L.C. No. 70,084, 235 F. 2d, 108, Cert. Den. 352 U.S. 912). The Union and the employer had a contract providing for arbitration and agreeing that there would be no strike or lockout. The Union staged a sitdown or wildcat strike. The employer brought an action in Court for breach of contract and the Union filed a motion to stay pending arbitration. In denying the motion, the Court said:

> "Even if the unions originally had an issue referable to arbitration, they chose instead to resolve that issue in their favor by use of their economic strength. Having thus violated their contract to plaintiff's damage, it was too late for them to demand arbitration on this issue."

[fol. 72] The Cuneo case has been followed and cited repeatedly. In the year 1960 the Cuneo case was relied upon by Portland Web Pressmen's Union v. Oregonian Pub. Co. 188 Fed. Sup. 859, Aff. (on another ground), 286 Fed. 2d, 4, Cert. Den., 366 U.S. 912.

Another case is Western Express Co. v. Brotherhood of Railroad Trainmen (NY Sup. Ct. App. Div. (1950) 18 L.C. No. 65,980). In this case the question was whether a party to an agreement to arbitrate may obtain a Court order compelling arbitration after the party has taken action which amounts to an abandonment of the agreement to arbitrate, and it was the employer who had taken such inconsistent action by filing with the National Labor Relations Board. The Court said:

"Where an employer files with the NLRB against a union unfair practice charges involving the same dispute as is the subject of an arbitration proceeding, such action amounts to an abandonment of the agreement between the employer and the union to arbitrate that subject. The employer is not thereafter entitled to compel the union to arbitrate on the subject."

Many other cases are cited in the above cases.

On the question of election of remedies, a recent U. S. Supreme Court opinion in 1959 has also been relied upon, [fol. 73] Union Pacific Ry. v. Price, (1959) 360 U.S. 601, 37 L.C. No. 65,559.

I have found no cases contrary to the authorities above cited. The cases cited by plaintiff seem to rely entirely upon the question of whether or not the remedy *elected* by the party at fault was or was not subject to arbitration. This Court is satisfied that where parties have agreed to settle by arbitration and have failed to proceed to arbitrate in the manner or at the time agreed upon, but have, instead, chosen to rely upon their economic strength and have elected a remedy which they agreed they would not pursue, they cannot thereafter go back and demand the remedy which they have waived.

It Is Therefore the finding and ruling of the Court that it appears as a matter of law that plaintiff has waived its right to arbitration in this case by electing the walkout or strike and by filing an unfair labor practice claim with the National Labor Relations Board.

The ruling of the Court sustaining defendant's contention in its application for ruling on law points hereinabove stated, constitutes a final order on the points so ruled upon. Since the ruling does not dispose of the whole case, however, it is interlocutory for the purposes of appeal.

[fol. 74]

IN THE DISTRICT COURT OF WOODBURY COUNTY

APPLICATION TO SUPREME COURT OF THE STATE OF IOWA FOR ORDER GRANTING APPEAL IN ADVANCE OF FINAL JUDGMENT

Thereafter plaintiff-appellant made application to the Supreme Court of the State of Iowa for an order granting an appeal in advance of final judgment stating to the Court as follows:

1. That defendant is engaged in the meat packing industry in Sioux City, Iowa.

2. That plaintiff is a local labor union which represents the production employees of defendant; that the members of plaintiff are all of the production employees of defendant who were actively engaged in work for the defendant at its plant prior to May 11, 1961.

3. That plaintiff and defendant are parties to a collective bargaining agreement covering terms and conditions of employment of the employees; that said agreement was executed on October 1, 1960, and provided that it would remain in effect until October 1, 1961, and from year to year thereafter unless terminated by the serving of notice by either party at least 60 days prior to October 1, 1961, or October 1 of any year thereafter.

4. That the petition of plaintiff, as amended, alleges that defendant discharged one employee (Anton Stamoulis) on May 11, 1961, and discharged the remaining approximately 190 employees employed in positions within the unit covered by the collective bargaining agreement on or about June 26, 1961.

5. That the original dispute which resulted in the discharge of Mr. Stamoulis as alleged in plaintiff's reply, [fol. 75] arose out of the defendant's assignment of supervisory personnel to perform work of the production unit employees in violation of the collective bargaining agreement.

6. That the collective bargaining agreement, as alleged in the Petition, contains in Section 33 a specific procedure

for the settlement of disputes between the plaintiff and defendant and provides for ultimate determination of any dispute with reference to the "proper interpretation or application" of the provisions of the contract by an impartial arbitrator, following the filing of a grievance by plaintiff with the defendant.

7. That the Petition of plaintiff further alleges that the grievances were duly filed with defendant, one on behalf of Anton Stamoulis and the other for the remaining 190 employees discharged on or about June 26, 1961; that both grievances alleged improper discharges not based on good cause as provided by the contract between the parties; that defendant has consistently refused to submit the grievance to arbitration, as required under the contract, despite repeated requests by plaintiff to do so.

8. That the Petition was filed in the District Court seeking an Order of Court directing defendant to proceed to arbitration of the grievances in accordance with the collective bargaining agreement; that no request was made of the Court to make any determination concerning the merits of the grievances.

[fol. 76] 9. That subsequently defendant filed various pleadings which included certain alleged legal defenses to plaintiff's petition; and that under R. C. P. 105 the defendant subsequently asked for a ruling on law points on its following three contentions:

(a) That the Court cannot under Iowa law and procedure specifically enforce an executory agreement to arbitrate.

(b) That the plaintiff has waived its right to enforce the arbitration provision of the agreement by bringing an action before the National Labor Relations Board and by allegedly engaging in a walk-out in violation of the agreement.

(c) That the Notice of Grievances was allegedly served too late.

10. That a final unfavorable ruling to plaintiff on any of these law points effectively defeated plaintiff's petition;

that the Court on February 13, 1962, made adverse rulings to plaintiff on two of these points holding in conclusion on these two points as follows:

(a) "It must be conceded that there is a conflict of authority on the question of whether or not Section 301(a) Labor Management Relations Act, as interpreted in the Lincoln Mills case is binding upon State Courts. Both State and Federal Courts are in conflict on this matter. So far as this Court is able to determine the matter has not been authoritatively passed upon by the United States Supreme Court, and, therefore, this Court deems itself [fol. 77] bound to follow Iowa precedence and holds as a matter of law that plaintiff is not entitled to specific performance of the agreement to arbitrate disputes."

(b) "IT IS THEREFORE the finding and ruling of the Court that it appears as a matter of law that plaintiff has waived its right to arbitration in this case by electing the walkout or strike and by filing an unfair labor practice claim with the National Labor Relations Board."

11. That the Court recognized the finality of its orders to the cause of plaintiff by concluding its opinion as follows: "The ruling of the Court sustaining defendant's contention in its application for a ruling on law points hereinabove stated, constitutes a final order on the points so ruled upon. Since the ruling does not dispose of the whole case, however, it is interlocutory for the purpose of appeal."

12. That the only matter remaining not acted upon under the Court's rulings is an alleged counterclaim of defendant for damages; that the testimony to establish the facts of plaintiff's petition is voluminous and would require a lengthy Court hearing all of which would be for no purpose if the Court's rulings herein are in fact correct.

13. That the rulings of the Court adverse to plaintiff on the law points involve substantial rights in this cause and will materially affect the final decision, and a determination of the correctness of said rulings before trial on the merits [fol. 78] will better serve the interests of justice.

14. That the plaintiff specifically contends that recent U.S. Supreme Court decisions directly conflict with the rulings of the Court herein of which plaintiff complains and that an appeal in advance of final judgment on these rulings will in fact expedite the trial of this matter.

Wherefore, the plaintiff respectfully prays that the Court grant the Appeal and enter an Order, setting this application for hearing before the Court, or a Justice thereof and prescribe the Notice to be given of the date and place of said hearing and for an Order staying all proceedings in the District Court of Iowa, in and for Woodbury County, Iowa, pending the hearing on this Application and the rulings and orders to be made and entered herein and, also make all such Orders as may be appropriate and necessary as will preserve their rights.

IN THE SUPREME COURT OF THE STATE OF IOWA

ORDER—March 5, 1962

Application granted. Appeal Allowed.

[fol. 79]

IN THE DISTRICT COURT OF WOODBURY COUNTY

To: The Clerk of the District Court of Woodbury County, Iowa.

NOTICE OF APPEAL—Filed March 7, 1962

You are hereby notified that the plaintiff in this case hereby appeals to the Supreme Court of Iowa from the final judgment and decision on law points in this cause entered on the 13th day of February, 1962 and from the final order and decree herein and from all interlocutory rulings and decisions adverse to appellant.

[fol. 80]

IN THE SUPREME COURT OF THE STATE OF IOWA

164 50664

LOCAL UNION NO. 721, UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS, AFL-CIO, Appellant,

v.

NEEDHAM PACKING COMPANY, INC., d/b/a SIOUX CITY DRESSED BEEF, a Corporation, Appellee.

Appeal from Woodbury District Court. George M. Paradise, Judge.

Appeal from order on points of Law under Rule 105, R.C.P., as to force and effect of a no-strike clause in a collective bargaining agreement. Affirmed and Remanded.

Harry H. Smith, Sioux City, Iowa.
Colton, Fruchtman & Watt, Chicago, Ill.
For Appellant.

Shull, Marshall, Mayne, Marks & Vizintos, Sioux City, Iowa.
James A. Gilker, Fort Smith, Arkansas,
For Appellees.

[fol. 81]

OPINION—Filed January 15, 1963

HAYS, J.

Plaintiff, as bargaining agent for employees of the defendant, and defendant entered into a collective bargaining agreement which contained the following provision, being paragraph 33-C(5) thereof, "In the event a dispute shall arise between the Company and the Union with reference to the proper interpretation of (sic) application of the provisions of this contract and such dispute cannot be settled by mutual agreement of the parties, such dispute shall be

referred to a board of arbitration *upon the request of the Union.* * * * Said Arbitration Board shall have authority only to interpret and apply the provisions of this contract. Its award * * * shall be binding upon the Company and the Union and upon the employees involved" (Italics added). The agreement, paragraph 9, provided: "It is agreed that during the period of this agreement the employees shall not engage in and the Union shall not call or sanction any slow down, work stoppage or strike, and no lock out shall be inaugurated (sic) by the Company".

This equitable action brought by the Union seeks to specifically enforce arbitration by the Company of certain grievances filed by the Union and which the Company refuses to arbitrate. Generally, the facts as set forth in the pleadings are,—In May 1961, the Company discharged an employee, such discharge being arbitral as to whether it was for just cause, as authorized by paragraph 8(a) of the bargaining agreement. Following such discharge, 190 employees left their jobs and have refused to return until the question of just cause for the discharge of the one employee has been adjusted. The Company contends that by walking out the employees breached Par. 9 of the bargaining agreement and that the same is no longer in force [fol. 82] and effect. It is not seriously contended in this court that the 190 workers did not walk off the job and are still refusing to return thereto. Also, by counterclaim the Company asks substantial damages on account of the walkout. The Company made application to the Court to rule upon three points of law, as provided for under Rule 105, R.C.P., to-wit: (1) Plaintiff not entitled to relief since Iowa law denies specific endorsement of an executory agreement to arbitrate. (2) Plaintiff not entitled to relief since it has waived the right to enforce arbitration provision, by the walkout and by filing complaint before the NLRB to enforce its claim. (3) No grievance filed within time required by agreement and the right to arbitrate has expired. The trial court sustained defendant's contention as stated in No. (1) and (2) above and rejected No. 3, leaving for further determination the damage issue presented by the counterclaim. Plaintiff was granted permission to appeal under Rule 332 R.C.P.

I. Error No. 1, is to the effect that the issues raised in the case must be determined under federal law, not the state. It is conceded that the questions here come within the purview of Section 301(a) 29 U.S.C. Sec. 185(a) which provides as follows: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." The United States Supreme Court, while holding that State Courts may hear and determine controversies coming under Section 301(a), held that in so doing they must apply and follow the federal law. Dowd Box Co., v. Courtney, 368 U.S. 502, 82 S. Ct. ....., 7 L. Ed. 2d 483. [fol. 83] In the leading case of Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U.S. 448, 455, 77 S. Ct. 923, 1 L. ed. 2d 972, the Court said "Plainly the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike. Viewed in this light, the legislation (Section 301) does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way". (Italics ours). See also, Teamsters Chauffeurs, Warehousemen & Helpers, v. Lucas Flour Co., 369 U.S. 95, 7 L. ed. 2d 593, 82 S. Ct. 571; Atkinson v. Sinclair Refining Co., 370 U.S. 238, 8 L. ed. 2d 462, 82 S. Ct. ..... Appellee concedes in argument that Federal law must be applied so we need spend no further time on this assigned error except to say that under Federal law, agreements to arbitrate may be specifically enforced. United Steelworkers of America v. American Manufacturing Co., 363 U.S. 564, 4 L. ed. 2d 1403, 80 S. Ct. 1343; United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 4 L. ed. 2d, 1409, 80 S. Ct. 1347; United Steelworkers of America v. Enterprise Wheel and Car Corporation, 363 U.S. 593, 4 L. ed. 2d 1424, 80 S.C. 1358.

II. Error is claimed on the Court's ruling that right to arbitration was waived by the walkout. The appellant cites

and relies upon the three steelworker cases, last above cited. In those cases arbitration was ordered but in none of them was the breach of a no strike clause involved as it is in the instant case. We do not find that the exact question before us has been determined, however there are cases dealing with the no strike clause. Atkinson v. Sinclair [fol. 84] Refining case, supra, is an action by the Refining Co., to recover damages for a breach of a no-strike clause in a bargaining agreement. Defendant moved to stay proceedings pending arbitration. The stay was denied, the court saying the agreement expressly provides that arbitration may be invoked only at the option of the Union. At no place in the contract does the Union agree to arbitrate at the behest of the Company. The Company is to take its claim elsewhere, which it has now done. In Drake Bakeries v. Local 50, American Bakery & Confectionery Workers International AFL-CIO, 370 U.S. 254, 8 L. ed. 2d 474, 82 S. Ct. ....., decided the same date as the Sinclair Case, supra, the court ordered a stay of action for damages on account of a breach of a no-strike clause pending arbitration. It bases its holding upon the all inclusive provision in the agreement to arbitrate, saying that the arbitration agreement "obligated the Company to arbitrate its claim for damages from forbidden strikes by the Union".

While in the Bakeries Case, the Company contended, under the "quid pro quo" rule, (See Lincoln Case supra) there was a waiver of right to arbitrate the court states no such action was taken by the Company and no decision was made thereto. In the instant case we are squarely faced with issue of a waiver of right to arbitrate because of breach of no-strike clause.

In the Warrior & Gulf case, supra, the court said, page 583 of 363 U.S. "A collective bargaining agreement may treat only with certain specific practices, leaving the rest to management but subject to the possibility of work stoppages. When, however, an absolute no strike clause is included in the agreement, then in a very real sense anything that management does is subject to the agreement * * * ". Whether the "quid pro quo" rule will be followed to the [fol. 85] extent of declaring a breach of a no-strike clause

constitutes a waiver of rights to arbitrate under the agreement, depends upon the view to be taken of Section 301(a), supra. Clearly, under said rule work stoppage by strikes, etc., is not conducive to economic tranquility and progress. If the view is taken that a strike is merely another incident or grievance which should be decided as are other contract violations, it would seem the Company has relinquished many valuable rights and received nothing in return and arbitration agreements will be shied away from. In fact the purpose of Section 301(a) will be entirely emasculated. If, on the other hand, the view is taken that a no-strike clause means what it says and that if the Union has the right to require arbitration of differences arising between it and the Company then the Company has a similar right to have the Union abide by its agreement we are well along the road to labor and management tranquility. It "should not have its cake and eat it too". We think the "quid pro quo" view advanced in the Lincoln case, supra, is the sound and sensible rule to adopt. This is the view in effect taken by the trial court and though Iowa laws were being applied, we see no conflict with the federal laws and think that actually it was federal law that was used. We think the trial court was correct in holding the Union had waived its right to arbitrate the grievances filed by its walkout.

Two other matters are urged but we find no merit therein and make no comment thereon.

The order of the trial court is affirmed and cause remanded for further proceedings pending therein.

Affirmed and Remanded.

Garfield, C.J., Larson, Thompson, Peterson, Snell and Moore, JJ., concur.

Thornton, J., dissents.

Stuart, J., takes no part.

[fol. 86] THORNTON, J. (dissenting).

I respectfully dissent. The pleadings in this case should not be construed to hold that a violation of the no-strike clause is admitted or stands undenied. The question is not ready for decision under rule 105, Rules of Civil Procedure.

Further, the parties have agreed on a tribunal for the determination of questions arising, "with reference to the proper interpretation or application of the provisions of this contract." This provision is not a narrow one. It includes the no-strike clause. The fact that arbitration may be instigated only at the request of the union should not be determinative. The company has so agreed. Whether or not there has been a violation of the no-strike clause is proper for the arbitrators to consider in determining the grievance. A waiver would go to the merits of that question.

What I believe to be the error in the majority opinion is holding that once an evidence of a violation of a no-strike clause appears the parties are no longer required to arbitrate. Under the broad provision for arbitration violations by both parties must be considered by the arbitrators.

Under the provisions of this contract where the union has requested arbitration in accordance with the contract that proceedings should be compelled. The company is denied no rights. It has agreed to be bound by the award of the arbitrators. If after that proceedings is complete it has a damage claim it may proceed in the courts. That is no concern of ours at this time. I would reverse.

[fol. 87] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF IOWA

No. 50664

Appeal from Woodbury District Court

LOCAL UNION No. 721, UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, AFL-CIO, Appellant,

vs.

NEEDHAM PACKING COMPANY, INC., d/b/a SIOUX CITY DRESSED BEEF, a corporation, Appellee.

ORDER STAYING ISSUANCE OF PROCEDENDO, ETC.—
Filed February 21, 1963

Upon presentation of Appellant's application to stay issuance of procedendo to the Woodbury District Court pending Appellant's filing a Petition for Certiorari in the Supreme Court of the United States, It Is Ordered that issuance of procedendo be stayed until May 1, 1963, provided that if the Supreme Court of the United States shall deny Certiorari prior to the aforesaid date, procedendo shall issue forthwith.

It Is Further Ordered, that all proceedings herein in the Woodbury District Court be stayed until such time as this Court may issue procedendo.

T. G. Garfield, Chief Justice, Supreme Court of Iowa.

[fol. 88] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 89]

SUPREME COURT OF THE UNITED STATES

No. 996, October Term, 1962

LOCAL UNION NO. 721, UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, AFL-CIO, Petitioner,

vs.

NEEDHAM PACKING COMPANY, INC., d/b/a SIOUX CITY DRESSED BEEF.

ORDER ALLOWING CERTIORARI—June 17, 1963

The petition herein for a writ of certiorari to the Supreme Court of the State of Iowa is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.